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SUPREME COURT OF THE UNITED STATES.

No. 187.

WILLIAM WISEMAN, PL'FF IN ER.,

vs.

ACHILLE CHIAPPELLA.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE EASTERN DISTRICT OF LOUISIANA

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3700

UNITED STATES OF AMERICA,
Eastern District of Louisiana.

WILLIAM WISEMAN
vs.
ACHILLE CHIAPELLA. } No. 2570.

Pleas and proceedings before the honorable the circuit court of the United States in and for the fifth judicial circuit and eastern district of Louisiana, at the April term, A. D. 1858, of the said court, held at the city of New Orleans on the ninth day of June, 1858.

Be it remembered that heretofore, to wit, on the 5th day of January, 1856, came William Wiseman, by his attorneys, Moïse & W. M. Randolph, esqrs., in the clerk's office of said court, and filed a petition, which is in words and figures as follows:

Petition.—Filed 5th January, 1856.

To the honorable the circuit court of the United States for the fifth circuit and eastern district of Louisiana:

The petition of William Wiseman, a citizen of the State of Mississippi, and resident therein—

Respectfully shows, that petitioner is holder and owner of a certain bill of exchange for two thousand and forty-five $\frac{45}{100}$ dollars, dated at Vicksburg, Mississippi, May 13th, 1855, drawn by Jno. A. Durden and A. Durden on, and accepted by, Wm. Laughlin & Co., of New Orleans, to the order of Laughlin, Searles & Co., and by the said Laughlin, Searles & Co. endorsed in blank, said bill of exchange being payable on the 23d day of Nov., 1855.

Petitioner alleges that said bill of exchange was intrusted to Achille Chiappella, a citizen of Louisiana, and resident of the city of New Orleans, a duly-commissioned notary public for the parish and city of New Orleans, to demand payment of the same from the acceptor thereof, and to protest the same for non-payment should the said acceptor refuse payment; that through the neglect and carelessness of said Chiappella, notary public, in making a legal demand of the said acceptors, and by the neglect and carelessness of said Chiappella in duly setting forth a legal demand of said acceptors in the protest thereof made by the said Chiappella, notary public, the endorsers of said bill were discharged from their obligation to pay the same by judgment of the circuit court of the United States for the ninth circuit and southern district of Mississippi.

Petitioner further represents that the acceptor and payees and endorsers of said bill are insolvent, and that by reason of the misconduct of said Chiappella, notary public, in not making a legal demand for payment, and not setting forth in the protest thereof a legal demand, so as to bind the drawers, the said Chiappella has become indebted to petitioner in the said sum of $2,045\frac{45}{100}$, with interest from the 23d Nov., 1855, at the rate of 5 per cent. per annum.

Wherefore petitioner prays that said Achille Chiapella be cited to appear and answer this petition, and after due proceedings, there be judgment for petitioner against said Chiappella for $2,045\frac{45}{100}$, with interest, as aforesaid.

Petitioner further prays for general relief.

MOISE & W. M. RANDOLPH,
Att'ys for Pet'r.

Protest annexed to Petition.

UNITED STATES OF AMERICA,
State of Louisiana.

By this public instrument of protest, be it known, that on this twenty-third day of November, in the year one thousand eight hundred and fifty, at the request of the cashier of and holder for the branch of the Louisiana State Bank, second municipality of the original bill of exchange, whereof a true copy is on the reverse hereof written, I, Achille Chiappella, notary public, dwelling in the city of New Orleans, duly commissioned and sworn, went several times to the office of the acceptors of said bill of exchange, in Gravier street, (in order to demand payment for the same;) at each time I found the doors closed, and no person there to answer my demand.

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said bill of exchange, as against all others whom it doth or may concern, for all exchange and re-exchange, damages, costs, charges, and interest suffered or to be suffered for want of payment of the said bill of exchange.

Thus done and protested in the presence of Selim Wagner and Edward Gottschalk, witnesses.

In testimony whereof, I grant these presents under my signature, and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

A. CHIAPPELLA,
Not. Pub.

S. WAGNER,
E. GOTTSCHALK.

First of exch. for $2,045\frac{45}{100}$.

VICKSBURG, MISS., *May* 13, 1850.

On 20th November, after date of this first of exchange, (second unpaid,) pay to Laughlin, Searles & Co., or order, two thousand and forty-five $\frac{45}{100}$ dollars, value received, and charge the same as advised by

JOHN A. DURDEN,
A. DURDEN.

To Messrs. LAUGHLIN,
New Orleans.

Accepted.

WM. LAUGHLIN & CO.

(Endorsed:) Laughlin, Searles & Co. H. Wiseman, pay to R. J. Palfrey, cash., or order. Will. S. Waller, cash.

Certificate of Notice.

I, Achille Chiappella, a notary public in and for the parish of Orleans, and State of Louisiana, residing in the city of New Orleans, duly commissioned and sworn, do certify that on the day of this protest I notified the drawers and all the endorsers of the bill of exchange hereunto attached of the within protest of the same for non-payment, by notices in writing and print, by me signed of the same date with the said protest, and which notices, say: to John A. Durden and A. Durden, drawers, Laughlin, Searles & Co., first endorsers, H. Wiseman, second endorser, and Will. S. Waller, cash, I, notary, enclosed under cover to the address of the latter, Lexington, K'y; and on the same day I deposited said notices in the post office in this city, in time to go by the first mail thereafter.

In testimony whereof, I grant these presents under my signature, and the impress of my seal of office, in the city of New [SEAL.] Orleans aforesaid, on the twenty-third day of November, A. D. 1850.

A. CHIAPPELLA,
Not. Pub.

I, the undersigned notary, do hereby certify that on the twenty-third day of November, 1850, the date of the within protest, and at the time of proceeding to the office of the acceptors, as therein stated, I had in my possession, for the purpose of presenting the same for payment, the bill of exchange hereunto annexed, and whereof a true copy is above written.

New Orleans, this 28th Nov'r, 1853.

A. CHIAPELLA,
Not. Pub.

Answer and Plea.—Filed 17th Jan'y, 1856.

WILLIAM WISEMAN
vs.
ACHILLE CHIAPELLA. } No. 2570.

U. S. CIRCUIT COURT,
For the Fifth Circuit and Eastern District of Louisiana.

Now, into this hon. court, by his attorneys, comes the defendant herein, and pleads a general denial of all and singular the facts and allegations in plaintiff's petition contained.

And further answering, respondent specially denies that he was ever employed by plaintiff, or that any privity exists between the said plaintiff and this respondent, or that he is in any manner liable in law for the matters and things set forth in the petition

Respondent further pleads prescription: wherefore respondent prays for judgment in his favor, with costs, and for all further general and equitable relief.

DURANT & HORNER,
Att'ys for Defd't.

1, 17, '56.

Supplemental Answer.—Filed 25th March, 1856.

U. S. CIRCUIT COURT,
Fifth Circuit and Eastern District of La.

WILLIAM WISEMAN
vs.
ACHILLE CHIAPELLA.

To the honorable the judges of the circuit court of the United States for the fifth circuit and eastern district of Louisiana:

The supplemental answer of A. Chiapella, the defendant, respectfully shows, that he desires this case to be tried by a jury.

Wherefore respondent prays that this his supplemental answer be filed, and that his case be put upon the jury docket of the court and tried as a jury case; and respondent prays for all further general and equitable relief.

DURANT & HORNOR,
Att'ys for Defdt.

Submission.—April term, 1858.

NEW ORLEANS, *Wednesday, 9th June*, 1858.

Court met pursuant to adjournment.

Present, Hon. J. A. Campbell, presiding judge. Present, Hon. Theo. H. McCaleb, district judge.

WM. WISEMAN
vs.
A. CHIAPELLA } 2570.

This cause was called for trial, and the following jury were sworn and empannelled to try the same: H. D. Seaman, B. F. Simms, F. G. Randolph, M. Simpson, Robt. Geddes, A. M. Hopkins, Jno. J. Fischer, E. Parmele, C. Heath, D. L. Ranlett, J. H. Heald, and E. Smith. Whereupon, after argument of counsel, at the instance of the court, and by consent of parties, the cause was withdrawn from the jury and submitted to the court.

Case stated by the Court.

EASTERN DISTRICT OF LOUISIANA,
In the Circuit Court.

WM. WISEMAN
vs.
A. CHIAPPELLA.

The plaintiffs in this suit produced evidence to show and did prove that he was the owner of the bill of exchange filed among the papers of the cause. And that his agent placed it at its maturity in the hands of the defendant, a notary public at the time in New Orleans, to be legally presented for payment, and in case of refusal to protest the same, so that the drawers and endorsers might be held responsible. He proved further that the defendant made the protest filed among the papers of the case, and which the court refers to as a part of this case. He proved that in a suit between the plaintiff and the drawers of the bill, in the circuit court of the United States in Mississippi, the protest was rejected as insufficient, and that in consequence the plaintiff lost his recourse upon them. That they were solvent, and that the acceptor *have* become insolvent.

The record of the proceedings in Mississippi is filed, and was admitted to prove the fact that the plaintiff had lost his recourse upon the drawers of the bill. The court is of the opinion that the protest is sufficient; and if not, that the plaintiff has lost his right to maintain this action against the notary under the plea of prescription, and judgment is therefore rendered in favor of the defendant.

J. A. CAMPBELL,
Ass't Just. S. C. U. S.

WISEMAN
vs.
CHIAPPELLA.

This suit was commenced by the plaintiff to recover from the defendant, a notary public in New Orleans, damages on account of his unskillful and negligent performance of his official duty in making the demand for payment, and the protest of a bill of exchange, of which the plaintiff was holder, so that the recourse of the latter against the solvent parties to the bill was lost.

The bill was drawn at Vicksburg, Mississippi, upon a firm doing business, and of which one of the members had a residence in New Orleans. The notary certifies that at the maturity of the bill he went several times to the office of the acceptors to make the demand for payment, but that every time he found the office closed, and no one to answer the demand, and therefore he protested, &c., &c., &c. No other inquiry was made for the acceptors, and no presentment was made at the dwelling-house of the resident partner.

Upon the trial of a suit in the circuit court of the U. S. in Mississippi, against the drawers of the bill, that court decided that this demand was not sufficient, and a verdict was rendered for the defendants. The plaintiff then commenced this suit.

We are inclined to think that the weight of authority in the United States is in favor of the conclusion that this demand was sufficient. The opinion of the supreme court of Louisiana to that effect was produced on the argument. And the case of the Union Bank vs. Feulkes, 2 Sneed, Tenn. Rep., 555, sustains that decision to its full extent. The same opinion was expressed in Shed vs. Brett Trustees, 1 Pick., 413; Br. Bank at Decatur vs. Hodges, 17 Ala. Rep., 42; Brown vs. Turner, 15 Ala. R., 832. And it is supported by the argument in the opinion given by the Supreme Court of the U. S., Williams vs. Bank of the U. S., 2 Pet., 96, in which the case of Goldsned vs. Bland is cited with approbation. We can see no sound reason for exacting greater diligence of a notary than was used in this case. The place of business of a commercial partnership is that to which persons who have dealings with them are usually referred. In accepting a bill, they virtually promise that at its maturity they may be found at their office with money to pay it. And their absence from that place at the maturity of the bill, without leaving a person to answer the demand, furnishes a very satisfactory evidence that they have no intention of fulfilling the contract.

The remaining objections to the protest, that the calls were not in business hours, and that the notary did not have the bill with him, are unreliable either as to law or fact. Burbank vs. Beach, 15 Bock, 326; 2 Sneed, Tenn. R., 555.

We think that the defendant's plea of prescription is available in the present case.

The act of the notary, which is the subject of complaint, was performed in November, 1850. This suit was commenced in January, 1856. The 3501 article of the civil code declares the actions for injurious words, whether verbal or written, and that for damages caused by slaves or animals, or resulting from offences or quasi offences, * * * are prescribed by one year. The act complained of is embraced within the definition of a quasi offence, as found in the article 2295 C. C. That article declares that "every person is responsible for the damage he occasions, not merely by his act, but by his negligence, his imprudence, or his want of skill." 6 Rand., 382.

The supreme court of Louisiana have decided that claims against a sheriff for negligence or malfeasance falls under the article of the code, and is prescribed in one year. Semple vs. Buhler, 6 N. S., 691. Fisk vs. Browder, ib. 710.

We cannot draw any distinction between those cases and this. The action here is against a public officer for a want of care and skill in the performance of an official duty by which the plaintiff has sustained damage. The prescription commences to run from the commission of the act complained of, for a suit might have been brought immediately. Bank of Utica vs. Child, 6 Can., 238. The action of Governor for the use vs. Gordon, 15 Ala. R. 72, was instituted against the security of a notary, on his official bond, for failing to notify the endorser of a promissory note of its non-payment in a proper manner. The action was defended under a statute of limitations, which declared that "no action, suit, or motion shall be maintained against the surety of any sheriff, constable, or other public officer of this State for any malfeasance, misfeasance, or other cause hereafter committed, unless the same be commenced or prosecuted within six years next after the commission of the act complained of." The court decided that the statute commenced to run from the commission of the act that produced the damage, and not from the date of the discovery of the damage. And that a notary public was a public officer within the meaning of the act, and that the defence was available in the particular case. The statute of Alabama, in describing the acts for which the parties' liability is to be limited, includes only those embraced in the articles of the code above cited; all the acts are either offences or quasi offences. We regard that case as very much in point, and supported by sound argument.

We are of opinion that the action of the plaintiff cannot be maintained, and that the defendant is entitled to judgment.

J. A. CAMPBELL,
Ass't Justice S. C. U. States.

Judgment.

CIRCUIT COURT OF THE UNITED STATES,
Fifth Circuit and Eastern District of Louisiana.

April term, 1858.

NEW ORLEANS, *Friday, 2d July,* 1858.

The following judgment was this day rec'd from Hon. J. A. Campbell, presiding judge, with an order that it be entered of record, viz:

WILLIAM WISEMAN
vs.
ACHILLE CHIAPPELLA. } 2570.

This cause having been argued and submitted on a former day, and the court having considered the same, doth now, in conformity to its written opinion, order, adjudge, and decree that there be judgment in favor of the defendant, and that plaintiff's petition be dismissed with costs.

Judgment entered 2d July, 1858.

Petition and order for Writ of Error.

U. S. CIRCUIT COURT,
Eastern District of Louisiana.

WILLIAM WISEMAN
vs.
A. CHIAPPELLA.

The petition of Wm. Wiseman, plaintiff herein, respectfully represents, that he is aggrieved by the judgment herein against him on the 2d July, 1858, and is advised there is error therein to his prejudice; wherefore he prays that a writ of error be allowed him, returnable to the next term of the Supreme Court of the United States, on his giving bond, with satisfactory security thereon, in such amount as the court may order.

MOISE & W. M. RANDOLPH,
Atty's for Pl'ffs.

Order.

Let the writ be allowed as prayed for, on plaintiffs giving bond in the sum of five hundred dollars, with good and solvent security, and conditioned according to law.

THEO. H. McCALEB,
U. S. Judge.

Bond for Writ of Error.

Know all men by these presents, that we, William Wiseman, as principal, and E. W. Moise, as surety, are held and firmly bound unto Achille Chiapella, in the full and just sum of five hundred dollars, to be paid to the said Achille Chiapella, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 30th day of July, in the year of our Lord one thousand eight hundred and fifty-eight.

Whereas, lately, at a circuit court of the United States, 5th judicial circuit, holding sessions in and for the east. district of L'a, at the city of New Orleans, in a suit depending in said circuit court, wherein William Wiseman is plaintiff, and Achille Chiappella is defendant, judgment was rendered against the said Wm. Wiseman, plaintiff, and the said Wm. Wiseman having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Achille Chiapella, citing and admonishing him to be and appear at a circuit court of the United States, to be holden at Washington, the first Monday of Dec'r next:

Now, the condition of the above obligation is such, that if the said Wm. Wiseman shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

MOISE & W. M. RANDOLPH,
For WILLIAM WISEMAN, [L. S.]
E. WARREN MOISE, [L. S.]

Sealed and delivered in presence of—
J. W. GURLEY.

E. W. Moise, esq., surety on the within bond, being duly sworn, says that he is worth the sum of five hundred dollars over and above all his debts and liabilities.

E. WARREN MOISE,

Sworn to and subscribed before me, this 30th day of July, 1858.
J. W. GURLEY,
U. S. Comm'r.

UNITED STATES OF AMERICA,
Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I certify that the foregoing twenty pages contain and form a full,

complete, true, and perfect transcript of the record and proceedings had in the case of William Wiseman vs. Achille Chiapella, No. 2570 of the docket of this court.

[SEAL.]

Attest:

J. W. GURLEY, *Clerk.*

New Orleans, 12th August, A. D. 1858.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between William Wiseman and Achille Chiappella, a manifest error hath happened, to the great damage of the said William Wiseman, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, shall be done.

Witness, the honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 30th of July, in the year of our Lord one thousand eight hundred and fifty-eight.

J. W. GURLEY,
Clerk of the United States Circuit Court
for Eastern District of Louisiana.

THE UNITED STATES OF AMERICA.

The President of the United States, to Achille Chiappella, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein William Wiseman, is plaintiff in error, and you are defend-

ant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 10th day of August, in the year of our Lord one thousand eight hundred and fifty-eight.

THEO. H. McCALEB.

[Endorsed:] United States circuit court. No. 2570. William Wiseman vs. Achille Chiappella. Citation in error.

Marshal's Return.

Rec'd August 10th, 1858, and on the 11th day of Aug't, 1858, served copy of the within citation in error on Achille Chiappella, in person, in the city of New Orleans, and returned same day.

JAMES GILLAN,
D'y U. S. M.